



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

NOTICE OF MOTION NO. 417 OF 2006
IN
PUBLIC INTEREST LITIGATION NO. 87 OF 2006
WITH
NOTICE OF MOTION NOS. 502, 555 & 549 OF 2009
WITH
CHAMBER SUMMONS NO. 172, 196 OF 2007
And
CHAMBER SUMMONS NOS. 10, 11, 260 OF 2009
And
CHAMBER SUMMONS NOS. 175 , 192 OF 2009

Bombay Environmental Action Group & anr.Petitioner
versus
The State of Maharashtra & others.....Respondents.
And
Dhanraj CHS Ltd.Applicant.

Mr. N.H. Seervai a/w. Sharan Jagtiani i/b. M.V.Jayakar & Co.
adv. for the Petitioner.

Mr. R.N. Kadam A.G. With N.P. Pandit AGP for the Respondent-
State.

Mr. R.N. Narula a/w. A. Dasgupta i/b. M/s. Nityoah & Asso. For
applicant in Notice of Motion.

Mr. Janak Dwarkadas a/w. C.S. Balsare, Vipul Bilve & Udit Mehta
i/b. Mulla & Mulla for applicant in N.M. 502, 555/09

Mr. K.K. Singhvi a/w Mrs. Geeta Joglekar for BMC.

Mr. Rui Rodrigues a/w N.R. Prajapati for Union of India.

Mr. R.R. Naik for respondents 15 and 19.

Mr. N.R. Bubna for applicant in N.M. 549/09.

Ms. Jai Kanade i/b G.S. Godbole for applicant in C.S. No. 172,
196/07 & 10,11,260/08.

Ms. Jai Kanade i/b. Nitin Mulye for applicant in C.S. 175, 192/09.

Mr. A.A. Garge for Navi Mumbai Mun. Corpn.

CORAM: J.N. PATEL Acting C.J.
AND
B. R. GAVAI, J.
DATED : 27th January, 2010.

P.C.:

1. Heard the learned advocates appearing for the parties.
2. The learned counsel appearing for the petitioner has drawn our attention to the order passed by this court on 6-10-2005 and submitted that the respondents particularly the authorities i.e. the State of Maharashtra and others have till date failed to comply with the order, on its various aspects and particularly it has failed to comply with the directions issued by this court in para 8 of the order and in spite of the court directing the State to declare all these areas which are found to be covered by Mangroves in the entire State of Maharashtra as forests.
3. The learned Advocate General has informed the court that the process is going on in so far as the other parts of the State is concerned and that unless proper procedure is followed the lands cannot be notified as forests and the State has taken steps to get the revenue record updated so as to implement the order passed by this court. The Advocate General has also submitted that so far as the forests on private land which has come under order passed by this court cannot be implemented unless proper procedure as incorporated in the Maharashtra Private Forests (Acquisition) Act, 1975 is followed by the State and the affected

persons are given an opportunity of being heard.

4. Mr. K.K. Singhvi the learned Senior counsel appearing for the Corporation submits that some of the important projects of the Corporation in respect of the development aspect is concerned, are held up for want of permission from the respondent State for the reason that the application for seeking permission for implementation of the project is not being considered on the ground that the order dated 6th October 2005 prohibits consideration of such application for granting permission.

5. The learned counsel for Tata Power submitted that atleast the court may direct the authorities to consider the application in accordance with law as it is affecting a very important project of power generation and supply, which is urgently required for erection of thermal power station and transmission line for supply of power to north and south Mumbai. Advocate Ms. Jai Kanade further submitted that at least the authorities may be directed to consider their application for grant of permission for their project.

6. We find much substance in the submission made by the learned counsel appearing for the petitioner, in so far as it pertains to effective and meaningful implementation of the order dated 6th October 2005. The State may take its own time for implementing the order dated 6th October 2005 but this court was very much concerned and was required to pass this order to prevent further destruction of mangroves and to ensure the conservation and rejuvenation of mangroves in the State of Maharashtra. It further

directed that the Maharashtra State using Satellite Remote Sensing is directed to prepare phase-II of the mapping for carrying out mangroves study using high resolution satellite data of 65 cms. spatial resolutions/one meter spatial resolution for detailed mapping of mangroves with a view to identify more precisely mangrove areas. After receiving the said data transfer of mangrove details on city survey/village maps (cadastral map) would be done. Thereafter this court directed and the learned Advocate General gave assurance that the said exercise is likely to take about six months. By mentioning that it has become imperative to pass interim order to protect the mangroves during the interregnum. It further clarified that this order shall not apply to all those cases which are specifically governed by injunction or stay order passed by the courts.

7. We are therefore making it clear that as the State has not been able to notify the areas which are covered by mangroves which has been identified and whether it falls under the public or private domain no non forests activity should be permitted by the respondent State in these mangroves area through out the State of Maharashtra which shall be subject to section 2 of the Forests (Conservation) Act 1980 and Environment Protection Act and Rules, without taking permission from the competent authority.

8. So far as the grievance of the applicants, as regards permission which is sought to be granted by the authorities is concerned, we make it clear that nothing prevents the statutory or local and private bodies and their contractors to approach the

competent authorities to seek permission for their respective projects as required in accordance with the law for the projects which are likely to affect mangroves area in the State of Maharashtra as specified in mapping of mangroves whereby mangrove areas stand delineated and the authorities on such an application being filed, would consider it strictly in accordance with law in the light of the interim orders passed by this court from time to time and keeping in mind principle of sustainable development. If such permission is granted by the competent authority the same shall be subject to approval of this court and the parties should obtain leave of the court before implementing the project in mangroves area. This will enable the court to monitor whether the principle of sustainable development is being scrupulously followed or not for the preservation, protection of mangroves area which is ecologically fragile area.

Stand over to 17-2-2010.

(Acting C.J.)

(B.R. Gavai, J.)